

REMARKS:

Applicant respectfully requests continued examination of the above-referenced application pursuant to 37 C.F.R. § 1.114. A check in the amount of \$395.00 is enclosed to satisfy the necessary fee.

Claims 1-18 are pending in this application.

New claim 18 has been added by this paper. No new matter has been introduced in new claim 18 and support for new claim 18 may be found at paragraphs 13-25 of the specification.

Claims 7 and 15 have been amended to include the word "about." No new matter has been introduced by the amendments. Support for the introduction of the word "about" into claims 7 and 15 may be found at paragraph 20 of the specification.

Claim 6 has been amended by this paper to fix a typographical error. No new matter has been introduced by the amendment.

Claims 1-17 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,268,189 to Doerter in view of U.S. Patent No. 4,840,805 to Sugisawa et al. The rejections are respectfully traversed.

The Doerter reference discloses a process for packing shellfish, such as crab, in a container. In particular, as shown in Fig. 1, the process includes packing the shellfish in the container, (2) filling the container with a carrageenan/water mixture such that "[t]he mixture fills the container and effectively forces any air from the container, leaving only shellfish and the carrageenan mixture," col. 3, ll. 8-10, (3) hermetically sealing the container, (4) sterilizing or pasteurizing the container and (5) cooling the container.

The Sugisawa et al. reference discloses a process for packing fish (not crabmeat) in a pouch. In particular, the Sugisawa et al. reference discloses packing dried, broiled fish in a pouch, vacuum sealing the pouch to achieve an air content in the pouch of 25 percent or less and sterilizing the pouch. At col. 3, ll. 9-16, the Sugisawa et al. reference cites (1) improved heat sterilization, (2) preventing the flow of drips and (3) reduced breaking of the fish meat as the reasons for removing air during the vacuum packing process.

The Examiner asserts that the addition of a mixture of carrageenan and water to a package, in accordance with the disclosure of the Doerter reference, "would create a partial vacuum in the package." Applicant respectfully disagrees. The Doerter reference teaches that

“the mixture fills the container and effectively forces any air from the container, leaving only shellfish and the carrageenan mixture.” Col. 3, ll. 8-10 (emphasis added). Additionally, the Doerter reference teaches that “it is important that the quantity of prepared mixture is correct in order to avoid entrapment of air” while hermetically sealing the container. Col. 3, ll. 13-15 (emphasis added).

Thus, the Doerter reference discloses removing all the air from the package to create a complete vacuum, not a partial vacuum. Certainly, the Doerter reference does not disclose “adjusting a volume of air within said packaging vessel to obtain an air to crabmeat ratio,” as required by the pending claims of the present application. To the contrary, the Doerter reference teaches away from obtaining an air to crabmeat ratio by teaching that no air is left or entrapped in the container, as explained above. Col. 3, ll. 8-10, 13-15.

Since the Doerter reference discloses adding a carrageenan/water mixture to remove all the air from the container so that “only shellfish and the carrageenan mixture” remain, col. 3, l. 10, a person of ordinary skill in the art would not be motivated to combine Doerter’s teaching of total air removal (i.e., no air remaining in the container) with a reference, like the Sugisawa et al. reference, that teaches leaving air in the container. *See* MPEP § 2143.01 (“If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious”).

Neither the Doerter nor the Sugisawa et al. references teach adjusting the volume of air in a packaging vessel packed with crabmeat such that undetected anaerobic bacterial growth is prevented or reduced while allowing odor producing aerobic bacterial growth during temperature abuse. Rather, the Doerter reference teaches displacing all air from the container with a gel mixture to prevent the shellfish from being saturated with water during pasteurization or from being over-cooked. Col. 1, ll. 26-30. Additionally, since no air is present in the container, the Doerter reference does not teach preventing undetected anaerobic bacterial growth, but would instead promote its growth by providing a totally anaerobic environment. Also, with no air in the container, no aerobic bacterial growth can occur, therefore, no odor will be produced during temperature abuse to alert the consumer that the meat is contaminated.

The Sugisawa et al. reference teaches a sterilization process where fish, not crabmeat, is

stored at room temperature for extended time. *See* example 1, col. 4, ll. 8-9. Since the fish was sterilized, the high temperatures killed the anaerobic bacteria and, therefore, the Sugisawa et al. reference is not concerned with anaerobic bacterial growth. Also, since the fish was sterilized and stored at room temperature, there is no concern that bacteria will grow due to temperature abuse, unlike packages that must be refrigerated after pasteurization.

Thus, neither the Doerter nor the Sugisawa et al. reference, alone or in combination, teaches the claimed method and product, or the advantages of the claimed method and product.

Accordingly, withdrawal of the rejections of claims 1-17 in view of the Doerter and Sugisawa et al. references is respectfully requested.

Claims 1-17 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Pub. No. 2002/0061412 to Ueyama et al. in view of the Sugisawa et al. reference. The rejections are respectfully traversed.

The Ueyama et al. reference discloses a heat-shrinkable multilayer film for packaging, among other things, foods having projections (e.g., crabs), fish meat and other marine products. P. 5, ¶ 66. However, the Ueyama et al. reference makes no mention of preparing a pasteurized packaged crabmeat product, let alone a pasteurized packaged crabmeat product having an adjusted volume of air for preventing undetected anaerobic bacterial growth.

The Examiner asserts that, at page 3, paragraph 39, the Ueyama et al. reference teaches “heat treating (pasteurizing) or sterilizing” the sealed packaging vessel. Applicant respectfully disagrees. Paragraph 39 of the Ueyama et al. reference merely teaches the properties desired in the inner surface layer of the heat-shrinkable film, such as sealing strength and high heat resistance “at an elevated temperature for heat-sh[rin]king the multilayer film and heat-sterilizing the packaged product.” Heat-shrinking the multilayer film is not pasteurizing because heat-shrinking only requires seconds at low grade temperatures. *See* ¶ 0073 (shrinking in 10 seconds), ¶ 0075 (shrinking in 3 seconds), ¶ 0090 (shrinking in 5 seconds), ¶ 0094 (shrinking in 1 second). Thus, no portion of the Ueyama et al. reference teaches or suggests pasteurizing the sealed packaging vessel.

Furthermore, like the Ueyama et al. reference, the Sugisawa et al. reference does not teach pasteurization. *See* Sugisawa et al. (title: “Process For Preparing Sterilized Packed Fish And Product Thereof) (emphasis added). Inasmuch as neither the Ueyama et al. nor the

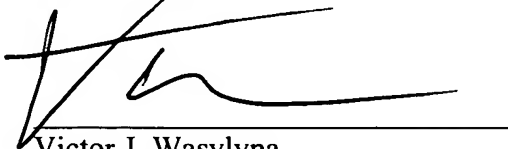
Sugisawa et al. references teach the step of pasteurizing a sealed packaging vessel, it is submitted that the Examiner's proposed combination of the Ueyama et al. and Sugisawa et al. references cannot, as matter of law, render obvious the pending claims of the present application.

Additionally, there is no reasonable expectation of success in attempting to combine the Ueyama et al. and the Sugisawa et al. references, as suggested by the Examiner. In the September 6, 2006 Office action, the Examiner argues that "since adjusting the volume of air inside a package improves the storage properties of packaged shellfish as taught by Sugisawa, one of ordinary skill in the art would have been motivated to package the shellfish (crabmeat) in a package made of multilayer film as taught in Ueyama and adjust the volume of air inside the package to have air to meat ratio of about 18% so that the sterilized package becomes more shelf stable." However, the Examiner ignores the fact that the multilayer film disclosed in the Ueyama et al. reference is heat-shrinkable and that a container made of the heat-shrinkable film will not have a definite or known volume from which the air to crabmeat ratio may be calculated. The additional shrinkage of the film may change the volume of the container and may make the air to crabmeat ratio unknown or difficult to ascertain. Therefore, the heat-shrinkable film taught by the Ueyama et al. reference is not compatible with the method and product of the present application and, therefore, there is no reasonable expectation that the Examiner's proposed combination of the Ueyama et al. and Sugisawa et al. references will result in a successful method and product for packaging crabmeat.

Accordingly, for the reasons expressed above, withdrawal of the rejections of claims 1-17 in view of the Ueyama et al. and the Sugisawa et al. references is respectfully requested.

The Commissioner is hereby authorized to treat any paper that is filed in this application, which requires an extension of time, as incorporating a request for such an extension. 37 C.F.R. § 1.136(a)(3). The Commissioner is further authorized to charge any fees required by this paper or to credit any overpayment to Deposit Account No. 20-0809.

Respectfully submitted,



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Reg. No. 52,345

Serial No. 10/691,480
Docket No. 424532-00002
Amendment

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